

REMARKS

In the Official Action dated December 4, 2008¹, Claims 1, 2, 4, 5, 7, 9-11, 13-15 and 17-20 are pending and under examination. Claim 7 has been objected to and Claims 1, 2, 4, 5, 9-11 and 13 are allowed.

This response addresses all outstanding rejections and objections and places the claims in condition for allowance. Favorable consideration of the pending claims is respectfully submitted.

Claims 14 and 19 have been rejected under 35 U.S.C. §112, first paragraph as allegedly lacking enablement. Without conceding to the propriety of the Examiner's rejection and solely in an effort to expedite favorable prosecution, Claims 14 and 19 have been cancelled without prejudice. Accordingly, the rejection of Claims 14 and 19 under 35 U.S.C. §112, first paragraph is rendered moot and withdrawal thereof is respectfully requested.

Claim 15 has been rejected as allegedly anticipated under 35 U.S.C. §102(b) by Falsen et al. J.Sys. Bacteriology 1999:217-221. Without conceding to the propriety of the Examiner's rejection and solely in an effort to expedite favorable prosecution, Claim 15 has been cancelled without prejudice. Accordingly, the rejection of Claim 15 under 35 U.S.C. §102(b) is rendered moot and withdrawal thereof is respectfully requested.

Claim 20 has been rejected under 35 U.S.C. §112, first paragraph as allegedly lacking descriptive support. Without conceding to the propriety of the Examiner's rejection and solely in an effort to expedite favorable prosecution, Claim 20 has been cancelled without prejudice. Accordingly, the rejection of Claim 20 under 35 U.S.C. §112, first paragraph is rendered moot and withdrawal thereof is respectfully requested.

¹ This official action supersedes the Official action mailed 11/12/08 which was vacated by the Examiner.

Claim 7 has been objected to as allegedly unclear. In an effort to clarify the scope of Claim 7 and in accordance with the Examiner's suggestion, Claim 7 has been amended to insert the phrase "the second" before probiotic to clarify Claim 7. No new matter has been added. Withdrawal of the objection to Claim 7 is respectfully requested.

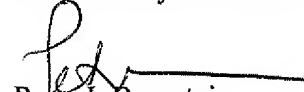
Claims 17 and 18 have been rejected under 35 U.S.C. §112, second paragraph as allegedly indefinite. The Examiner alleges that the claims lack proper antecedent basis. In response and in an effort to expedite allowance of the claims, Applicants have amended claims 17 and 18 to properly depend from Claim 7. No new matter has been introduced and based on this amendment, the claims should be allowable. The Examiner is respectfully requested to withdraw the rejection of Claims 17 and 18 under 35 U.S.C. §112, second paragraph.

Claims 15, 17 and 18 have been rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Falsen et al. in view of BBL, Columbia Agar, Difco and Cavaliere (US Patent 6,277,370) and further in view of Gibson et al. (Gastroenterology 1995:975-892). In response, Applicants have cancelled Claim 15 without prejudice and have amended Claims 17 and 18 to depend solely from Claim 7, which is dependent on a methodology which is neither taught nor suggested by the references cited by the Examiner. Accordingly, the rejection of claims 15, 17 and 18 under 35 U.S.C. §103(a) is overcome and withdrawal thereof is respectfully requested.

All previously withdrawn claims have been cancelled, without prejudice.

In view of the foregoing amendments and remarks, it is firmly believed that the subject application is in condition for allowance, which action is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter I. Bernstein", with a long horizontal stroke extending to the right.

Peter I. Bernstein

Registration No. 43,497

Scully, Scott, Murphy & Presser, P. C.
400 Garden City Plaza, Suite 300
Garden City, New York 11530
Telephone: 516-742-4343
PIB:dk